27. PROCEEDINGS OF THE COMMISSIONER, COMMERCIAL TAXES THIRUVANANTHAPURAM

Present: Paul Antony.IAS

Sub:- KVAT Act -03- Clarification U/s. 94 -Rate of tax on Di-Calcium Phasphate-clarified orders issued- reg:

Read: Application dt. 04.04.05 from Kerala Chemicals and Protiens Ltd, Cochin 36.

ORDER No.C7.19361/05/CT Dt. 07.03.06

M/s. Kerala Chemicals and Protiens Ltd, Panampilly Nagar, Kochi has sought clarification Under section 94 of the KVAT Act 03 on the rate of tax applicable to Di-Calcium Phosphate.

- 2. The argument of the applicant is that the HSN Code for Di-calcium Phosphate is 2309.90.90. As per the note under chapter 23 of the Central Excise Tariff, Heading 2309 includes products of a kind used in animal feeding not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and bye products of such processing. As per Entry 3 of the First schedule to the KVAT Act, 2003 "aquatic feed, poultry feed and its supplements & cattle feeds, including grass, hay etc., but excluding those specially mentioned in schedule III" are exempted from tax. The authorized representative therefore argued that Di-calcium Phosphate produced by them can rightly be classified under Sl. No.3 (g) "Others", of the first schedule with HSN Code 2309.90.90.
- 3. The arguments of the authorized representative have been considered with reference to the entries in the schedules and the HSN Classification. Entry 3 of the First Schedule to the Act reads:
 - "3. Aquatic feed, poultry feed, cattle feed and their supplements including husk of pulses, additives and concentrates, grass and hay, but excluding those specifically mentioned in Schedule III
 - (1) xxxx
 - (2) xxxx
 - (3) xxxx
 - (4) xxxx

(5) Preparations of kind used in animal feeding xxx xxx xxx xxx (g) other preparations of animal feed 2309.90.90"

As per the rules of interpretation of schedules given in the Appendix to the Act, those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act, 1975. As per the general rule 3 of interpretation of the entries in the schedules to the Customs Tariff Act, where goods are, prima facie, classifiable under two or more headings, classification has to be effected as follows:

"(a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

Xxxx xxx xxx"

Code No.2309. of the HSN reads:

"Preparations of a kind used in animal feeding" Code No. 23099090, "other" falls under the sub-heading "Feeds for fish(prawn etc.)"

Code No.28352500 of the HSN reads"Calcium hydrogen orthophosphate ("dicalcium phosphate")

So Code No.28352500 is a very specific entry whereas 23099090 is a general entry. The argument of the applicant that dicalcium phosphate manufactured by it has to be classified under item 3(5)(g) of the First schedule cannot therefore be accepted. Since Dicalcium Phosphate with HSN Code28352500 is not included in any of the schedules to the Act, it will attract tax only @12.5%

4. It is therefore clarified that Di-calcium phosphate will attract tax @12.5%

Sd/